



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-68/54607

PRELIMINARY RECITALS

Pursuant to a petition filed August 26, 2002, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Waupaca County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on September 25, 2002, at Waupaca, Wisconsin.

The issue for determination is whether the community spouse can increase her allocation.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Pat Moe, ESS
Waupaca County Dept Of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Joseph A. Nowick
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN XXX-XX-XXXX, CARES #XXXXXXXXXXXX) is a resident of Waupaca County.
2. An application for MA was submitted for the petitioner on August 22, 2002. On August 23, 2002, MA was approved as of July 1, 2002.
3. On August 26, 2002, the county agency sent a written notice of negative action to the petitioner. The negative action in this case was the determination of \$540 as the amount of patient responsibility as of August 1, 2002.

4. The petitioner has a gross monthly income of approximately \$585 from Social Security and a pension. He now resides in a skilled nursing home.
5. The petitioner's spouse receives \$2,217.08 per month from her employment.
6. For the hearing, (petitioner's spouse) completed a list of her monthly expenses. (Exhibit #1). The total amount of expenses per month on the average was \$2,852.86.
7. When the petitioner had his stroke, he had to purchase medicines and durable medical equipment. (petitioner's spouse) is still paying for these items on her credit cards.

DISCUSSION

The federal Medicare Catastrophic Coverage Act of 1988 included extensive changes in State Medicaid eligibility determinations as they relate to spousal impoverishment where one spouse is a resident in a nursing home. The purpose of the new act was to protect a "community" spouse's assets and resources and designate how a spousal share would be computed. The Act also established a new minimum needs allowance for the community spouse at a specified percentage of the federal poverty line. Consequently the Wisconsin Legislature enacted sec. 49.455, Wis. Stats. in order to bring the Wisconsin Medicaid program into conformity with federal law.

Section 49.455 specifically states that the department is to use the criteria of that statutory section in determining the eligibility for medical assistance under §§49.46 or 49.47, Wis. Stats. and the required contribution toward the care of an institutionalized spouse.

"Community spouse" refers to the person who is married to an institutionalized individual. See sec. 49.455(1), Wis. Stats. As a general rule, no income of a spouse is considered to be available for use by the other spouse during any month in which that other spouse is an institutionalized spouse. See sec. 49.455(3), Wis. Stats. However, after an institutionalized person is found eligible for medical assistance (MA), he or she may allocate income to the community spouse.

If the community spouse's monthly income is below a certain amount, the institutionalized spouse may allocate some of his or her income to bring the community spouse's income up to that amount. The amount is the lesser of \$2,175 or \$1990 plus an excess shelter allowance, which is any shelter cost over \$597. See *MA Handbook*, Appendix, §23.6.0. *BPS Operations Memo*, 02-23; issued March 19, 2002. In this case, Sec. 49.455(4)(c), Wis. Stats., the Medical Assistance Handbook, Appendix 23.6.0., and sec. 49.455(4)(b), Wis. Stats., allows an increase in the monthly community spouse allotment by order of a fair hearing examiner or a court. See also MA Handbook, Appendix 23.6.0. In order to increase the allotment, the examiner must find exceptional circumstances resulting in financial duress. See sec. 49.455(8)(c), Stats.

It is important to emphasize that even if income allocation is possible, not all expenses qualify. In order for a Hearing Officer to use expenses, they must meet "necessary and basic maintenance needs" MA Handbook, Appendix 23.6.0. "Income Allocation". This corresponds to the statutory language that the new income amount is in lieu of the "minimum monthly maintenance needs". Sec. 49.455(8)(c), Stats., emphasis added. Because the community spouse is essentially asking state taxpayers to give the nursing home resident more financial support in the form of MA, I find that every expense is not automatically appropriate for inclusion, even if it is for a worthy cause and not frivolous. As an example, by following this logic, I do not include any dues or donations to religious or charitable donations as an allowable expense. Using the above standards, I find that there is an exceptional circumstance. That circumstance is the debt from the medical expenses incurred as a result of the petitioner's illness. As I may now increase the income allocation, the next step is to determine what expenses claimed by (petitioner's spouse) are for "necessary and basic maintenance needs". The current amount allocated is the maximum monthly needs allowance of \$2,175, as set by the county agency per sec. 49.455(4)(c) and based on the community spouse not having

excess shelter costs shelter costs over \$597. To make a change, I must examine both the monthly income and liabilities of (petitioner's spouse).

I will only address some of the items submitted in Exhibit #1. If not addressed, then the amount listed is accepted. The items are those that do not meet the definition of "necessary and basic maintenance needs". The first item is the \$43 cable television bill as this Office has held that cable television is not a necessary item. Second is the \$5.50 for life insurance on (petitioner's spouse) checking account. Life insurance is only necessary if there are minor children in the home. There was no evidence presented that was the case here. Next is the \$30 for the cell phone as there was no justification presented why it is a necessity. An example would be if the community spouse was in very poor health and needed it to quickly contact medical help when out of her home. Finally, there is no necessity for special insurance that pays the petitioner money if she should be diagnosed with either an illness or specifically with cancer. The total of the monthly premium payments for this type of insurance is \$179.73. The total of the items I am excluding is \$258.23.

Thus, based on all of the above, I find that the maximum monthly income allowance must be placed at \$2,594.63. (petitioner's spouse) is to receive as much of her husband's income that will raise her income to that amount. Using the appropriate figures as of August 1, 2002 as an example, that amount would be \$377.55, leaving the patient liability (after the \$45 personal allowance) of \$162.45 each month. The county agency may adjust these figures based on more accurate figures or if the income to either spouse is different in a given month. When (petitioner's spouse) has completed paying for the medical bills, she must so inform the county agency. A new determination may be necessary at that time.

CONCLUSIONS OF LAW

1. The cost of expenses for the items that are basic and necessary may be a basis for allocating income to a community spouse above the Maximum Community Spouse Income Allocation.
2. Due to exceptional circumstances, the petitioner's wife requires a current maximum monthly income allowance of \$2,594.63 in order to avert financial duress.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be remanded to the county agency to reduce the petitioner's patient liability to an amount that allows the community spouse to receive an income allocation that will (petitioner's spouse) income to as close to \$2,594.63 for the months of August, 2002, and onward. The county agency must also see that any overpayment by the petitioner in terms of cost sharing is refunded or credited in some way. This is to be done within 10 days from the date of this Order.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence that would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 1st day of
October, 2002

/sJoseph A. Nowick
Administrative Law Judge
Division of Hearings and Appeals
1014/JAN